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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/771,382	01/25/2001	Ian Richard Anselm Peak	8795-24 UI	6450

570 7590 03/22/2002

AKIN, GUMP, STRAUSS, HAUER & FELD, L.L.P.  
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2005 MARKET STREET, SUITE 2200  
PHILADELPHIA, PA 19103

EXAMINER

FORD, VANESSA L

ART UNIT	PAPER NUMBER
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1645

DATE MAILED: 03/22/2002

12

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/771,382

Applicant(s)

PEAK ET AL.

Examiner

Vanessa L. Ford

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 July 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-23 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All   b) ☐ Some \*   c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_                      6) ☐ Other: \_\_\_\_\_

### ELECTION/RESTRICTION

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-9 and 15-16 are drawn to an isolated protein and a pharmaceutical composition, classified in class 530, subclass 350.

Further election of one SEQ.ID.NO required.

II. Claims 10-14 and 15-16 are drawn to an isolated protein and a pharmaceutical composition, classified in class 530, subclass 350.

Further election of one SEQ.ID.NO required. Applicant must also elect the specific residues within the SEQ ID NO when appropriate.

III. Claims 17 and 18-23 are drawn to an isolated nucleic acid, vector and host cell encoding the protein of claim 1, classified in class 536, 435 subclass. Further election of one SEQ.ID.NO required. Applicant must also elect the specific residues within in the SEQ ID NO when appropriate.

IV. Claims 17 and 18-23 are drawn to an isolated nucleic acid, vector and host cell encoding the protein of claim 10, classified in class 536, 435 subclass. Further election of one SEQ.ID.NO required. Applicant must also elect the specific residues within in the SEQ ID NO when appropriate.

2. The inventions are distinct, each from the other because of the following reasons:

Groups I and II are related as different products. Groups I and II are patentably distinct products which are different from each other structurally.

3. Groups III and IV are related as different products. Groups III and IV are patentably distinct products which are different from each other structurally.

4. Groups (I and II) and Groups (III and IV) are related as different products. Groups (I and II) are drawn to a protein which constitute amino acids. Groups (III and IV) are drawn to nucleic acids. Groups (I and II) and (III and IV) are patentably distinct products which are different to each other structurally, functionally and biochemically.

#### **DISTINCT INVENTIONS**

5. Group I contains claims 1-9 and 15-16 reciting a Markush group containing a plurality of disclosed patentably distinct inventions with distinct SEQ.ID.NOS 1-10. Group II contains claims 10-14 and 15-16 reciting a Markush group containing a plurality of disclosed patentably distinct inventions with distinct SEQ.ID.NOS 1-11 and 13-27, and 33-39 and specific residues within SEQ ID Nos 1-11. Groups III and IV contains claim 17 and 18-23 reciting a Markush group containing a plurality of disclosed patentably distinct inventions with distinct SEQ.ID.NOS 22, and 28-32 and specific residues with SEQ ID No. 22. Applicant is advised to elect one SEQ.ID.NO and the specific residues for that SEQ ID No. when appropriate from any group of inventions. Applicant is required under 35 U.S.C. 121 to elect a single disclosed SEQ.ID.NO. Each species of amino acids or nucleic acids differ each from the other because they have different chemical structures.

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6. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their separate classification and their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

7. Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

8. Applicant is advised that the response to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

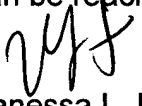
9. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i). 9.

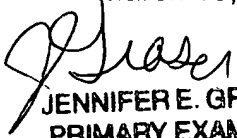
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10. Any inquiry of the general nature or relating to the status of this general application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Papers relating to this application may be submitted to Technology Center 1600, Group 1640 by facsimile transmission. The faxing of such papers must conform with the notice published in the Office Gazette, 1096 OG 30 (November 15, 1989). Should applicant wish to FAX a response, the current FAX number for the Group 1600 is (703) 308-4242.

Any inquiry concerning this communication from the examiner should be directed to Vanessa L. Ford, whose telephone number is (703) 308-4735. The examiner can normally be reached on Monday – Friday from 7:30 AM to 4:00 PM. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith, can be reached at (703) 308-3909.

  
Vanessa L. Ford  
Biotechnology Patent Examiner  
March 13, 2002

  
JENNIFER E. GRASER  
PRIMARY EXAMINER

3/20/02 